M. K. Morse Co. *and* United Steelworkers of America, AFL–CIO–CLC and Employees for Self-Representation, Party in Interest. Cases 8–CA–19631, 8–CA–19891, 8–CA–19954, 8–CA–20152, 8–CA–20457, 8–CA–20487, and 8–RC–13523

May 14, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS CRACRAFT AND DEVANEY

On March 31, 1989, Administrative Law Judge Harold Bernard Jr. issued the attached decision. The Respondent and the General Counsel filed exceptions, supporting briefs, and answering briefs; the Respondent filed cross–exceptions; and the Charging Party filed a brief in support of the administrative law judge's decision.[1]

The National Labor Relations Board has delegated its authority in this proceeding to a three–member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions[3] only to the extent consistent with this Decision and Order and to adopt the Order as modified.

1. We agree with the judge's conclusion that Brian Smithberger, Robert Dean, and Lawrence Kovats are guards within the meaning of Section 9(b)(3) of the Act. Their principal duties involve protecting the Respondent's property by making periodic rounds of the plant, punching security clocks at various stations, and opening plant offices and gates with keys which they possess. See *Blue Grass Industries*, 287 NLRB 274, 300 (1987). These employees also perform some nonguard duties, including putting materials into the furnaces, checking supplies, and performing janitorial work. The amount of time spent in each function, however, is unclear and we therefore do not rely on the judge's finding that they ''spend only minimal time in other tasks.''

2. We also agree with the judge that John Vesalo, an employee of the Myers Agency, the employment agency used by the Respondent to screen many of its applicants, was the Respondent's agent. The Respondent argues that *Westward Ho Hotel*, 251 NLRB 1199 (1980), compels the Board to find otherwise. We disagree, and find *Westward Ho Hotel* distinguishable. The employer in *Westward Ho* filled job vacancies through in–house hiring, newspaper ads, and the services of several employment agencies. It hired only about 1 percent of its employees through the particular employment agency alleged to be its agent. The Board found the lack of continuity in service dispositive in concluding that the employment agency was not an agent. Here, the Respondent and the Myers Agency have had a close business relationship for about 10 years, and Myers screens a large percentage of the employees who are hired by Morse. Thus, we agree with the judge that Vesalo and the Myers Agency are the Respondent's agent. *Gourmet Foods*, 270 NLRB 578, 610–611 (1984). See also *Alliance Rubber Co.*, 286 NLRB 645, 645–646 (1987). We also rely on a telephone conversation which occurred in Vesalo's office between the Respondent's vice president, John Comune, and Vesalo in the presence of applicant James Monroe. Vesalo said to Comune, ''What about the guy I sent down earlier today? Oh, he has union ties, huh?'' Vesalo then turned to Monroe and told him that if he had union ties like that, he would not be hired. We infer from the testimony of Comune and Vesalo that the subject of the telephone conversation was applicant John Sparrow. Accordingly, we find this is additional evidence establishing that the Respond-

[1] The Respondent filed a motion to strike the General Counsel's exceptions and brief in support of its exceptions and to strike the Charging Party's brief because neither party served these papers on representatives of the Employees for Self–Representation (ESR). The motion is denied because no representative of the ESR made an appearance at the hearing despite being served with the fourth consolidated complaint; nor has the Respondent offered any evidence to show that the failure to make service on the ESR prejudiced any party in this case. See *Terpening Truck Co.*, 271 NLRB 96 fn. 1 (1984).

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

Additionally, our review of the record reveals no evidence that the judge prejudged the case, made prejudicial rulings, or demonstrated any bias. Contrary to the Respondent's contention, we find that the Respondent was accorded due process, including a fair hearing, in all respects.

[3] The judge relied on the authorization card of Roy P. Eberhardt, which was misplaced by the Union and not produced at the hearing. We find it unnecessary to rely on this card because the Union has demonstrated its majority status without it.

In adopting the judge's finding that the Respondent violated Sec. 8(a)(3) and (1) of the Act by refusing to hire John Sparrow and Ervin Potts, we rely solely on *Chancellor Transportation Co.*, 282 NLRB 887 (1987).

Member Cracraft would not find that the oral warning issued to union supporter Edward Lashua on October 20, 1987, was unlawful. She finds the cases relied on by the judge to find a violation to be factually inapposite and legally distinguishable. Assuming that a prima facie case has been established to warrant the inference that Lashua's union activities were a motivating factor for the warning, she finds, particularly in the absence of a definitive credibility resolution by the judge, that the Respondent has demonstrated that it would have orally admonished Lashua for what it reasonably perceived to be a threat of physical harm uttered by Lashua to the complainant contract foreman even in the absence of Lashua's union activity.

In addition, apart from the two unlawful threats of discharge found herein, Member Cracraft finds it unnecessary to pass on the remainder of the General Counsel's exceptions to the judge's failure to find additional violations of Sec. 8(a)(1) and (2) concerning alleged promises of benefits, assistance to ESR, coercive threats and statements, creation of the impression of surveillance and futility of union activities, and disparagement of union supporters, because any violations found would be cumulative in this case and would not materially affect the remedy.

Regarding Lashua's warning, the judge found that Lashua and the construction worker were ''well-known'' to each other. The judge then characterized the incident which resulted in Lashua's reprimand as an exchange of ''humorous wholly innocuous banter in a friendly and playful manner.'' This characterization parallels Lashua's testimony. Significantly, the judge did not mention, or allude to, the construction worker's somewhat different version of the incident. Accordingly, Chairman Stephens and Member Devaney find, contrary to Member Cracraft, that the judge implicitly credited Lashua's testimony.

ent's articulated reason for failing to hire Sparrow (that he held too many jobs in the recent past) was pretextual and designed to mask its suspicion that he shared the prounion views of friend, neighbor, job reference, and vocal union activist Hobert Starcher. We further find that this conversation shows that the Respondent's union animus was specifically conveyed to Vesalo and that the Respondent and Vesalo were coordinating their efforts to keep potential union sympathizers from gaining employment with the Respondent.

3. During the campaign, the Respondent employed a labor consultant, Kevin Smyth, who spent lengthy periods of time in discussions with employees. On November 5, 1986, 2 days before the election, Smyth approached employee Cathy Henceroth and asked her opinion of the Union. He told her that she might be able to get back a $1-an-hour salary loss she had sustained after an injury if she voted against the Union. Smyth then told her that another employee, Robert Baugus, was going to be discharged because he supported the Union and was constantly out of his seat discussing union business. The judge credited Henceroth's testimony concerning this conversation and found that Smyth's comment regarding Henceroth's salary constituted an unlawful promise of benefit. The General Counsel excepts to the judge's failure to make a finding on Smyth's statement that Baugus was to be discharged because of his union activity. We find merit in the exception. Telling one employee that another employee is going to be discharged because of his union activity is coercive and violates Section 8(a)(1) of the Act. *Evans St. Clair, Inc*., 278 NLRB 459 (1986).

4. Employee James Monroe began work on January 19, 1987. Monroe told fellow employees that he understood that after his probationary period he would receive a wage increase to $7 or $8 per hour. Two days later, Vice President John Comune told Monroe that he found out everything that was said or done in the plant, and he denied promising Monroe such a raise. Monroe told Comune he would drop the matter. Comune noted a ''bad attitude'' comment in Monroe's file. Monroe began attending union meetings after his conversation with Comune and mentioned this to his supervisor on February 2. Two days later Monroe was discharged by Comune, who told him it was because his work was inadequate. Monroe protested and Comune told Monroe that he was ''still uncomfortable about the argument concerning money, in light of all the problems the Company was having with the Union.'' We agree with the judge that Monroe's discharge violated Section 8(a)(3) and (1). The General Counsel excepts to the judge's, perhaps inadvertent, failure to find Comune's statement coercive and a violation of Section 8(a)(1) of the Act. We agree. Telling an employee that remarks he has made have caused him to be discharged because there is union activity in the plant sends a message to all employees that their jobs are in jeopardy merely because others are engaging in protected activity. It accordingly coerces employees in violation of Section 8(a)(1) of the Act.

5. The judge found that the Respondent violated Section 8(a)(1) when Vice President Comune told some employees that ''You don't know what a good screwing is.'' He concluded that this statement was an unspecified threat of reprisal if the Union won the election. We disagree. When Comune happened upon the employees they were engaged in jocular, bawdy conversation and antics—one employee was pantomiming a sex act. Comune's crude remark was made in a laughing manner and contains no allusion to union activity. Thus, when viewed in context we conclude that his remark was made in reference to what he was observing and was not a threat of reprisal.

The judge additionally found a violation when Supervisor Schaufele referred to two union supporters as liars and used profanities to describe them. We disagree and find that the language used, while offensive, was not sufficiently threatening or disparaging to constitute a violation of the Act.[4]

6. In adopting the judge's bargaining order analysis, we note that the judge set aside the election and dismissed the petition in Case 8–RC–13523 without any discussion of the merit of election objections filed by the Petitioner Union in that case. The record reveals that the Regional Director issued an order directing hearing on objections, order consolidating cases and notice of hearing in Cases 8–RC–13523 and 8–CA–19631 on January 29, 1987. The Regional Director found that certain evidence offered in support of enumerated objections concerning the Employer's alleged unlawful assistance to ESR, interrogation of employees, promises of benefits, disparaging union supporters, threatening employees with wage reductions and layoffs, and discriminatorily disciplining union supporters, and that certain evidence offered in support of a catch-all objection alleging numerous independent violations of Section 8(a)(1), was coextensive with certain evidence in support of unfair labor practice allegations in Case 8–CA–19631 and should be consolidated for hearing with the unfair labor practice case. We find merit to these election objections, which generally parallel the unfair labor practices found, and set aside the election in Case 8–RC–13523.

[4] With respect to Plant Superintendent Roeser's profanities uttered to employee Edward Lashua on February 6, 1987, we agree that they are unlawful insofar as they were coupled with the reference to Lashua's charge filing and the order to clock out, but we find them covered by provisions of the Order concerning unlawful threats and discipline.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, M. K. Morse Co., Canton, Ohio, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Delete paragraph 1(c) and reletter the subsequent paragraphs.

2. Insert the following as paragraphs 1(m) and (n) and reletter the last paragraph (o).

''(m) Telling employees that other employees are going to be discharged because of their union activity.''

''(n) Telling employees they are being discharged because of union activity at the plant.''

3. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT coercively interrogate our employees concerning their feelings about United Steelworkers of America, AFL–CIO–CLC, or any other labor organization.

WE WILL NOT create the impression that employees' union activities are under surveillance.

WE WILL NOT threaten employees with specific or undefined reprisals including layoffs and that employees will be hurt if they support the Union.

WE WILL NOT solicit grievances and promise employees benefits, including promotion to a supervisory position and correction of grievances if they withdraw support from the Union.

WE WILL NOT blame the Union for lost or frozen employee benefits.

WE WILL NOT withdraw benefits from employees because of their support for the Union or indicate to them that activities in support of the Union are futile.

WE WILL NOT unlawfully support or assist Employees for Self–Representation.

WE WILL NOT administer any solicitation rule or policy in a discriminatory manner favoring Employees for Self–Representation and against United Steelworkers of America, AFL–CIO–CLC.

WE WILL NOT seek to induce any employee to inflict bodily harm against any employee leading union support in order to discourage employees' union activities.

WE WILL NOT discharge, refuse to hire, suspend, withdraw benefits from, falsely discipline, warn, or reprimand any employee in order to discourage employee support for the Union.

WE WILL NOT tell employees that the cost of the Company's defending against charges filed with the National Labor Relations Board against us is coming out of their wages, future earnings, or pocketbooks.

WE WILL NOT discriminatorily screen applicants for employment with us to discourage employee support for the Union.

WE WILL NOT tell employees that other employees are going to be discharged because of their union activity.

WE WILL NOT tell employees they are being discharged because of union activity at the plant.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by the Act.

WE WILL reinstate, hire, and make whole with interest, as applicable to the named employees James Monroe, Dan Hetrick, Ervin Potts, and John Sparrow for their resulting losses from discrimination against them, restore Doug Glantzer's paid lunch, rescind the suspensions against Edward Lashua and Robert Baugus while further making them whole for any loss suffered by them as a result of the discrimination against them, with interest, and further

WE WILL expunge from their records, as well as from the records of Steve Kortis, John Caplinger, and Steve Fowler, all unlawful discriminatory and false warnings, reprimands, or discipline, including last–chance agreements found to have been designed to discourage employee support for the Union.

WE WILL further notify these employees in writing that this has been done and that the above–described actions will not be used as a basis for any future disciplinary action against them.

WE WILL recognize and, on request, bargain collectively with United Steelworkers of America, AFL–CIO–CLC, as the exclusive bargaining representative of the Respondent in the following appropriate unit:

> All production and maintenance employees at the Employer's Canton, Ohio plant excluding all of-

fice clerical employees, professional employees, guards and supervisors as defined in the Act.

M. K. MORSE CO.

Allen Binstock, Esq., for the General Counsel.
Terrance Ryan, Esq., of Toledo, Ohio, for the Respondent.
James S. Gwin, Esq., Canton, Ohio, for the Charging Party.

DECISION

STATEMENT OF THE CASE

HAROLD BERNARD, JR., Administrative Law Judge. These cases were tried in January and February 1988 in Canton, Ohio, following charges filed November 13, 1986, and complaint issued January 28, 1987, with later amendments consolidated for hearing with objections to election in the representation case (8–RC–13523).[1] Respondent filed answers denying allegations contained in the consolidated complaints. The parties were accorded full opportunity to examine witnesses, introduce evidence, argue orally, and file briefs.

Issues

The issues are whether Respondent unlawfully interrogated employees, created the impression of surveillance of employee union activities, derided the Union and its employee supporters, threatened employees with reprisals, promised benefits, blamed the Union for lost benefits, created the impression that union activities were futile, withdrew benefits, discriminatorily disciplined, discharged, coercively warned, and refused to hire employees, unlawfully enforced a solicitation rule, encouraged assault of a union adherent, and rendered unlawful support to Employees for Self-Representation, thereby violating, in turn, Section 8(a)(1), (2), and (3) of the Act and warranting, as sought by counsel for the General Counsel herein, a bargaining order remedy. Subordinate matters concerning agency and supervisory status, the Union's majority, and the bargaining unit are also addressed.

On the entire record in this proceeding, including my observation of the witnesses during their examination and the parties' briefs, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent makes hacksaws, bandsaws, and abrasives together with related products at its plant in Canton, Ohio, from which it annually sells and ships products valued in excess of S50,000 directly to customers outside Ohio. I find, as admitted, that Respondent is an employer engaged in commerce within the meaning of the Act.

II. LABOR ORGANIZATIONS

Admittedly, the United Steelworkers of America, AFL–CIO–CLC is a labor organization within the meaning of Section 2(5) of the Act, and I so find. Respondent in its answer denies that Employees for Self-Representation (ESR) is a labor organization. The uncontroverted testimony by several witnesses, as well as numerous exhibits received into evidence, establish by a clear preponderance of the proof that at all relevant times ESR, an employee group open to hourly paid plant employees, was formed for the main purpose of representing Respondent's employees in bargaining with Respondent over wages, hours, benefits, and other conditions of employment, that it published numerous pamphlets explicitly concerning such matters which were regularly distributed among plant employees, held well-attended employee meetings to formulate action in such regard, including the handling of employee grievances, sent out notices regarding the selection of officers, and that such officers were elected and appointed to lead in helping to achieve its representation goals. I find that ESR, which continued to play an active role as a rival during the organizational campaign by the United Steelworkers through the election and thereafter, is, notwithstanding the lack of a totally formal structure, a labor organization within the meaning of Section 2(5) of the Act. *Betances Health Unit*, 283 NLRB 369 (1987); *Edward A. Utlant Memorial Hosital*, 249 NLRB 1153, 1160 (1980); *Armco, Inc*., 271 NLRB 350 (1984); and *Sahara Datsun, Inc. v. NLRB*, 811 F.2d 1317 (9th Cir. 1987).

Appropriate Unit

I find the appropriate unit herein, as stipulated by the parties in Case 8–RC–13523 to be:

> All production and maintenance employees at the Employer's Canton, Ohio plant excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

The parties also agree that the employees named on the voting list for eligibility used in the election conducted on November 7, 1986 (GC–2), some 69 in number, constitute all employees properly included in the unit except for disagreement as to four employees on said list, Brian Smithberger, Robert Dean, and Lawrence Kovats alleged to be guards, and Marsha Humes, daughter of Respondent's plant superintendent.

Smithberger, Dean, and Kovats, at times material herein, admittedly served in the capacity of ''security'' at Respondent's plant, where, Robert Dean testified, they were told to ''check everything in the plant,'' and made hourly tours, punching security clocks at various stations. The three were entrusted with keys to the plant office and plant gates which they opened for operations. Although they performed brief duties putting prescribed materials in a heat furnace occasionally, as well as some janitorial duties cleaning and checking supplies, their compensation was lower than plant employees received and they did not share in a January 1988 general wage increase. Dean testified that when he asked Plant Superintendent Roeser what his primary job at the plant was, that Roeser replied ''security,'' and that he, Dean, would ''go after'' anyone trying to break into the plant, that he was definitely there to protect the Company's property. As it is clear that the three employees regularly tour the plant for fire protection purposes, to safeguard the premises from intruders, and otherwise protect plant property from damage, are classified as ''security'' at the plant and spend only minimal time in other tasks, I find that their principal duties are to serve as guards, and that they are therefore excluded from

[1] The election results: 35 votes cast against and 30 votes cast in favor of representation.

the unit. *Blue Grass Industries*, 287 NLRB 274 (1987); and *Midwestern Mining & Reclamation*, 277 NLRB 221 (1985).

Marsha Humes is the daughter of overall Plant Superintendent (for over 10 years) Charles Roeser, who is partly responsible for hiring employees, reports to a vice president just below Respondent's owner in the chain of hierarchy, and who himself is a company shareholder. Humes has been employed by Respondent for 8 years as a press operator at $6.45 per hour. Humes works part time, sets her own hours—during one period she worked 4:30 a.m. to 1 p.m. without supervision—on a shift not worked by others, so that she was alone in plant 2 during the early hours. Humes decides her own break periods, receives no paid holidays or other fringe benefits as do other employees, and is not required to follow the usual reporting or lunchtimes at the plant; in fact, she has authority to change her working hours to suit herself and has done so. There is record evidence tending to show, as well, that she can move between departments such as press operation and packaging bandsaws. There is no question that Humes' working conditions are significantly different from those of other employees and that she occupies a special status as a result of her family relationship to one of Respondent's highest level supervisors, setting her apart from all other employees in the unit from which, I find, Humes is properly excluded. *Honeycomb Plastics Corp*., 288 NLRB 431 (1988); and *Holthouse Furniture Corp*., 242 NLRB 414, 416 (1979).

The Union's Majority Status

For the unit of employees thereby reduced—by the above 4 exclusions—from 69 to 65, counsel for General Counsel introduced and by probative evidence authenticated cards executed by 20 bargaining unit employees unequivocally designating the United Steelworkers of America, AFL–CIO–CLC as their collective-bargaining representative, 37 of which cards were given to the Union by September 11, 1986. (GC–33–75.)

Respondent's questioning of the validity of some cards because not authenticated by the card signer, or because there was no showing of a subjective intent by the card signer to authorize the Union as representative, or further, that an election purpose was mentioned by the card solicitor, an employee was told the signing was for his protection by the Union and the NLRB, or the year was incorrectly shown on one card, is without merit. There was no evidence that any card signer was told that the only purpose for signing a card was to secure an election, or that any card signer relied on any misrepresentation when signing a card; moreover, the single instance where a card showed the incorrect year was credibly corrected by testimony offered by the card signer himself. Numerous card signers, moreover, testified to authenticate that they had read, signed, and dated their cards, which specifically contained an explanation for the card's purpose over their signature. Moreover, in those instances when the cards' solicitors authenticated the cards, there was credible testimony concerning the relevant circumstances, the date, place, and in several instances, that employees were also informed orally concerning the nature of the cards' purpose as being to authorize the Union as bargaining representative. Board and Court decisions settled such questions against the Respondent's objections herein long ago, including the propriety and probative value of card solicitor testimony for authentication purposes. I find a clear preponderance in the evidence established the Union's majority status by September 11, 1986. *Jeffrey Mfg*., 248 NLRB 33, 36 (1980); *Gissel Packing Co*., 395 U.S. 575, 608 (1969); *Don the Beachcomber*, 163 NLRB 275 (1967); *Clothing Workers*, 419 F.2d 1207 (D.C. Cir. 1969), cert. denied 397 U.S. 988; and *Martin Electronics*, 183 NLRB 66 (1970). I have, moreover, decided on balance to count the authorization card signed by Roy P. Eberhardt, which was lost, in totaling said majority. It is well established that, ''testimony of an employee is itself probative of a union's majority status in circumstances where the card has been misplaced.'' *J. P. Stevens & Co*., 247 NLRB 420, 486 (1980), citing *Hedstrom Co*., 223 NLRB 1409, 1411 (1076), enfd. in relevant part 558 F.2d 1137, 1150 (3d Cir. 1977). Eberhardt testified he read and signed a union card such as the one shown him at the hearing identical to other cards introduced herein in September or October 1986 at the union hall, where he turned it in. A staff representative testified to conducting a search for the card in the office files there to no avail. There is not in this case an issue as to the exact date his card was signed, for reasons noted below; more importantly, there is not the slightest suggestion of bad faith in any of the circumstance's surrounding the card's loss. Given the further fact that the Union's majority is more than sufficient without the card, which militates in favor of its validity—there hence being less basis to suspect its proffer as other than in good faith, as well as the proof of its validity by appropriately advanced secondary evidence, it has been counted. *Rayner v. NLRB*, 665 F.2d 970 (1982), and cases cited supra; Fed.R.Evid. 1004 (1); and Section 10(b) of the Act providing that Board ''proceeding[s] shall, so far as practicable, be conducted in accordance with the [Federal] rules of evidence . . . .''

III. UNFAIR LABOR PRACTICES

Employees began efforts to secure collective-bargaining representation in August 1986, and from then on through the November election and its aftermath the testimony at this hearing reports a widespread, hostile reaction by Respondent to those efforts.

It is noteworthy just how many employees among the modestly sized plant force of 65 employees the Respondent contacted in person through its supervisory staff—the complaint alone alleges some 70 or more illegal acts, many against prounion employees generally as a group, and numerous actions towards individual members of the group by the supervisor or higher company officials in personal confrontations.

Interrogation and Threats

Nine employees testified to being interrogated by Respondent concerning their prounion sentiments, including some whom Respondent confronted with threats of reprisals. Maintenance employee John Caplinger credibly described an encounter with Plant Superintendent Chuck Roeser on August 19, 1986,[2] prior to Caplinger's open demonstration of union support, in a plant restroom otherwise unoccupied when Roeser wanted to know ''what's this about a union,'' indicating he heard Caplinger wanted to get a union in and be its president. Roeser admitted under examination that he

[2] All dates refer to 1986 unless otherwise indicated.

may have asked an employee ''what is this about this Union crap?'' Respondent's president, M. K. Morse, also questioned Caplinger alone on August 29 in the maintenance shanty or shop, where Morse was a not-too-frequent visitor, asking him ''what's this about a union?'', and proposing that they talk about it, pointing out ''if we put a union in here we're going to hurt a lot [of] people.'' Employee Stephen Kortis, welder for 7 years, described questioning by Executive Vice President Jack Comune on September 18 at his welder, before Kortis openly advocated union support, when Comune questioned what Kortis believed the problems were in the shop, declaring he knew Kortis was one of the ''top dogs'' getting all the union stuff started and stating that if employees did get a union some employees might have to take a wage cut. Press operator Catherine Henceroth recalls questioning by a labor relations consultant, Kevin Smyth, on November 5, 2 days before the election—in the pressroom—when Smyth, an admitted agent for Respondent, wanted to know her opinion about the Union and conducted discussions with her totaling 1-1/2 hours. Henceroth, without denial by Smyth, said that he told her if she voted against the Union there was a good possibility of getting her $1 an hour back—a reference to the employee's reduction in pay after an accident left Henceroth unable to do heavy lifting and an unlawful promise of benefit. Smyth also told her that a fellow employee, Bob Bougus, was going to be fired, ''because he was a union supporter always out of his seat talking union business.''

The Respondent questioned alleged discriminatee James R. Monroe during his prehire interview, early January 1987, when Vice President Comune told Monroe he was going to ask him some illegal questions, inquiring whether Monroe was previously involved in a union shop and how he felt about a union; and the record further reflects Respondent supervisors, including Comune, Plant Superintendent Roeser, Chief Engineer Jerry Borkwin, and Pat Chidester, packaging supervisor, individually interrogated employees Stephen Fowler, Robert Bougus, Edward Glen Fohl,[3] Daniel Hetrick, and Barbara Caplinger concerning their feelings about the Union during the election campaign period under similar circumstances credibly described by them and either completely undenied or unpersuasively addressed by Respondent witnesses such that I do not credit their accounts. Thus, I found Respondent officials' overly guarded, nonresponsive, frequently led leading questions, inconsistent, and argumentatively defensive in that they dodged questions and avoided direct answers. I find therefore, that Respondent's above described conduct constitutes impermissible coercive interrogation into employee union sentiments in violation of Section 8(a)(1) of the Act. *Professional Eye Care*, 289 NLRB 1376 (1988) (prehire interview questioning of employee Knutson); *Christopher Street Owners Corp*., 286 NLRB 253 (1987), citing *Rossmore House*, 269 NLRB 1176 (1984), and referring to questioning occurring in connection with other unlawful statements; and *Angelica Healthcare Services Groups*, 284 NLRB 844 (1987). Given the realities in the workplace, and the further Respondent conduct at this plant, I do not accept the Respondent's contention on brief that its conduct was innocent. See *Garman Construction Co*., 287 NLRB 88 (1987), citing *NLRB v. Gissel Packing Co*., 395 U.S. 575, 617 (1969).

The reported wrongdoing went further. Maintenance laborer Gary Gooding credibly reported that then maintenance supervisor Dave Schaufele, referring to a letter he handed Gooding on September 25, told him if the Union came into the shop it would cost the Company 25 percent of earnings and would come from employees like him being laid off as he was a younger employee. Schaufele, while offering his version, which may or may not have been a complete account, did not deny Gooding's account, which was left intact. Similarly, when employees Arley and Bobby Burns testified that Schaufele on September 25 told Arley Burns there would be a pay cut if the Union came in, attributing the cut to President Morse's expenses in fighting the Union, Schaufele gave an account of the words he used but did not specifically address or deny the Burns' accounts. Cross-examination of Arley Burns left the accounts undamaged in view of Schaufele's failure to deny them. Arley Burns testified further that Vice President Comune, in January 1987, responded to Burns' question why recently evaluated employees' wage increases were so low during a conversation with Burns, at his machine, that it was because of the Union, the money spent on the Union, and John Caplinger—the most prominent employee union activist as known by Comune. In addition to attributing lower wage increases to union activities and John Caplinger in particular, when Burns asked, ''when is this [expletive] going to stop; then?'' Comune replied that all Burns had to do was get a couple of guys together, get Caplinger off to the side, and do whatever he had to do to stop it and that will stop—that if they could stop him then ''we'll stop the whole thing'' meaning, plainly enough, the employees efforts towards union representation. Burns interpreted, he said, Comune's suggestion as a suggestion to use physical force to stop Caplinger's efforts. Since Burns, a weight-lifting practitioner over the years, had demonstrated strong disappointment over the low level in wage increases to Comune, who blamed the union campaign for the employee losses, Burns' view is not unreasonable; viz. That Comune's advice was to pressure Caplinger including by the use of physical force. Comune's own words regarding the use of a ''couple of guys'' along with Burns, getting Caplinger ''*to one side*'' and ''do *whatever* [he] had to do to stop it,'' that if they could stop *him* [Caplinger] ''we'll stop the whole thing'' supports the finding. Comune did not testify to either deny the testimony of Burns or the inducement of Burns in the latter's view to do whatever had to be done, including physical force to stop Caplinger's union activities. Clear violations of the Act are established in the threatening impact on Burns that Respondent would resort to physical violence on an employee to stop union activities. *Workroom for Designers*, 274 NLRB 840 (1985); *Lord Jim's*, 259 NLRB 1162, 1165 (1982); and *Jax Mold & Machine*, 255 NLRB 942 (1981).

Burns decided to support the union efforts given the above incident and wore a union T-shirt to an evaluation meeting. After losing some $3 an hour due to decreased orders for his machine, Burns talked to Comune who seemed disinterested.

[3] The mere fact that Chief Engineer Borkwin—not Fohl's regular supervisor—questioned Fohl sometime after Fohl wore a union hat does not establish Borkwin ever saw Fohl on the occasion when Fohl wore the hat or that Borkwin had any knowledge whatever whether Fohl was an open union supporter when he questioned him under the coercive circumstances described by Fohl including an implied promise of benefit and other unlawful threats then extant at the plant, and undenied by Respondent. Borkwin did not testify. *Max's City Deli*, 282 NLRB 742 (1987).

A couple days after evaluations, Comune told Burns and other employees, ''you don't know what a good screwing is.'' Burns saw abrasive supervisor Jim Betts shortly thereafter, when Betts approached him and said, ''Well I'm glad to see you wised up and took your [union] tee shirt off.'' Betts himself testified he told Burns he wasn't in favor of any union. Then Burns told Betts what Comune had said about a screwing, Betts replied, ''Well, if you get that union here, I'll bet you'll find out.'' Comune acknowledged his comment, Betts offered no denial. I find the supervisory comments constitute both an unlawful attribution of employee income loss to wearing a union shirt, and threats of unspecified but serious reprisals if the Union were to become the employees' bargaining representative. *K & M Electronics*, 283 NLRB 279 (1987) (see *Jones Plumbing Co*., 277 NLRB 437, 441 (1985)).

The Respondent's attribution of severe employee wage losses to their drive for representation continued on other occasions as well. Welder Stephen Kortis recalled an employee meeting in mid-February 1987 when Vice President Comune told employees that the cost of employees filing charges with the NLRB didn't come out of Morse's pocket (the company owner); rather, he said, ''it comes out of your raises and your future income.'' Welder Stephen Fowler testified that in December, during a warning by Manufacturing Vice President Mueller over an alleged production problem, Mueller told him that Superintendent Roeser had come down several times to try and discuss it and ''all you did was turn around and file a charge on us and we didn't appreciate it,'' referring to a charge filed by Fowler alleging harassment by Roeser. Fowler recalls Comune's statement at a company meeting that the filing of charges was hurting our (employees') pocketbook. For his part, Comune admitted he told Fowler, though characteristically unsure when, that Fowler's ''filing charges [with the NLRB] caused expenses so that the percentage of [sic] wages was going to decrease—that the money to pay for these charges was coming out of all our pockets—including employees'. For his part, Manufacturing Vice President Mueller testified that he didn't know if he mentioned or referred to Fowler's charge filing during the encounter and ''couldn't be specific'' concerning the conversation, leaving Fowler's credibly rendered testimony intact, and evincing further indications of Respondent witnesses' selective power of recall not demonstrated when testifying in friendlier waters. The above conduct is no more nor no less both an unlawful attribution of employee losses imposed by Respondent tied to their exercise of lawful rights under the Act and the threat, as sweepingly phrased in Vice President Comune's own admission of further such losses if ''this issue''—union problems—was going to continue, made during his talk with Fowler as described by Comune himself. The threat of adverse employer action against employees because of charges filed with the National Labor Relations Board against the employer is clearly unlawful. *Delta Faucet Co*., 251 NLRB 394 (1980).

Barbara Caplinger, packaging employee, testified that during the last week in August Supervisor Pat Chidester came into the band room where several employees were working (Caplinger was 5 feet away) and told employee Pat Brumbough that she had talked to all of her girls and that none would be for the Union or *they'd pay for it*. Caplinger's account was straightforward and given under the danger of substantial possible contradiction by the numerous employees she identified by name as being present—no such contradiction occurred. Chidester was not specific or complete in her denials of the account rendered by Caplinger and was generally contradictory during her examination so that the incomplete denial she offered left me unconvinced as to the value in her accout. I find this threat of retaliation a violation of the Act. *Max's City Deli*, supra. I further find the statement by Plant Superintendent Roeser to prospective employee James Monroe, as described by the latter as occurring on January 14 (or 15), 1987, during a plant tour, that the job didn't pay a lot but *was secure because the Company didn't have a union* was inferentially a threat of lessened employment security if Monroe were to engage in union activities—this conclusion arising from Respondent antiunion directed comments treated below—and therefore a further violation of Section 8(a)(1) of the Act. *L & J Equipment Co*., 272 NLRB 652 (1984); and *Brookfield Dairy*, 266 NLRB 698 (1983).

Further Promises of Benefit

During the unlawful interrogation of press operator Catherine Henceroth noted further above on November 5, where Respondent's consultant Smyth probed into the employee's opinion concerning the Union, and made a specific promise concerning her regaining a lost wage rate, Smyth also told Henceroth what the Company was prepared to do if the Union didn't win the election—first telling her a fellow employee, Bob Burns, had changed his vote for the Union after Smyth had talked to him. Smyth told her the bonus was going to be changed if the Union didn't come in, and that wages would be reevaluated. He also said that all kinds of changes would be made whether it came in or not. That same day Smyth, circulating around the plant, told employee Edward G. Fohl, paint line laborer, at his work station that if Company President Morse was given another chance (the election was 2 days away) he'd solve the problems of workers' wages and incentives and he would better working conditions—that the union activity was like having a gun pointing at his head and he (Morse) would be a fool not to address problems in the shop. These mainly undenied accounts are credited.

Employee Barbara Caplinger described a September talk with Vice President Comune, treated partly above, when he interrogated her at work—a second time—why she was for the Union. When the employee explained she was tired of supervisory harassment and threats, and wanted job protection, Comune told her, ''the supervisors would be taken care of if the union didn't come in'' that ''we had put a pretty big scare in Morse and he is willing to negotiate with employees if the Union doesn't come in.''

On August 5, Smyth met leading employee union adherent John Caplinger in a parking lot in Canton, Ohio, pursuant to a meeting arranged when Supervisor Jim Betts asked Caplinger to call Smyth. Smyth had been introduced as a company consultant during an earlier plant meeting attended by Caplinger and spent 40 days addressing the union campaign at the plant in the preelection period. Smyth, whom the record shows played a hands-on role, directly confronting and interrogating employees and unlawfully promising employees benefits if the Union didn't come in, told Caplinger he'd rather be working with him than against him, that he'd make a good supervisor—that there was a possibility of

being appointed a supervisor by the Company. Smyth assured Caplinger he could convince Morse that Caplinger would make a good one, and that three other company officials knew he was talking to him that day, saying later in testimony that either Comune or Morse were advised regarding his tactics. Smyth testified he merely thought from an earlier action by Caplinger in securing an injured employee first aid that he and Caplinger could come up with answers and solutions to problems at the plant prompting their, as he himself described it, highly confidential meeting. He testified he told Caplinger he had leadership skills that can be more positively used than as a front man for an untruthful union, admitting, he repeated the ''leadership quality'' remark five more times in their discussion. On cross-examination he did not deny directly Caplinger's account of the suggestion of an offer of a supervisory position, instead limiting himself to saying he told Caplinger he had no authority to make the offer. Caplinger turned down the offer, noting to Smyth he had already declined such a position earlier. None of the circumstances alleged by Smyth to have prompted the meeting with Caplinger ring at all true; and his examination by counsel for Respondent skirted the opportunity to have him deny head on Caplinger's testimony most of which was left undenied; besides, the emphasis by Smyth—again undenied—on Caplinger's leadership qualities five times in their talk lends considerable credence to Caplinger's account in such regard that Smyth was encouraging him to drop his union support, and work with Smyth against the Union as a company supervisor and at the very least that this was a viable option tendered to Caplinger if he would work with Smyth against the Union.

I find by the above-described conduct involving all the named employees that Respondent made unlawful promises of benefits to coerce employees into withdrawing their support for the Union, thereby further violating Section 8(a)(1) of the Act. *Keystone Lamp Mfg. Corp*., 284 NLRB 626 (1987).

Further Threats and Disparagement of Employee Union Adherents' Activities

Respondent's representatives disparaged employee union adherents to other employees in the plant, castigating them and portraying activities pointless on behalf of a scorned organization. Thus, on September 25, Maintenance Department Supervisor Schaufele told employee Gary Gooding he (Gooding) couldn't trust employee John Caplinger and Chuck Casler, to well-known employee union supporters because they were liars. The same day, employee James Shuman testified that Schaufele told him John Caplinger was ''a son of a bitch and a couple of union representative [sic] assholes.'' Shuman stated that Schaufele said he could talk for himself ''you didn't need those other assholes'' to think for you, that they were lying to you naming known union supporters Caplinger, Bob Burns, and Jac Seabolt. Welder Edward Lashua testified that Plant Superintendent Roeser angrily reacted to his wearing a brightly colored union T-shirt on February 6, 1987, telling him he didn't care how many charges ''you file against me'' telling him ''f—k your union.'' Respondent's efforts on brief to lessen or avoid the coercion practiced against employee rights under the Act by either painting a more gentle context or by unpersuasive denial are rejected. I find by such conduct further violations of the Act. *Bonanza Sirloin Pit*, 275 NLRB 310 (1985); and *Southern Illinois Petrol*, 277 NLRB 160 (1985).

Respondent further attempted to link its failure to grant wage reviews and increases promised beforehand to the Union's filing of charges and objections to the election, by a letter to employees dated November 18 (GC–7), in which Respondent stated ''the conditions under which you work are frozen'' and attributed such to the Union, in a clear further effort to thereby further disparage it and interfere with employee organizational rights under the Act in violation of Section 8(a)(1). *National Micronetics*, 277 NLRB 993 (1985); *J & G Wall Bakinq Co*., 272 NLRB 1002, 1012 (1984); and *Trover Clinic*, 280 NLRB 6 (1986). I agree with counsel for the General Counsel that the letter left the message with employees that an earlier promised and scheduled salary raise review was withdrawn by the letter's reference to frozen conditions, and further violated the Act. *Gerkin Co*., 279 NLRB 1012 (1986); and, *United Artists*, 277 NLRB 115, 124 (1985).

In a further effort to weaken the desires of employees to select a union, consultant Smyth told employee Henceroth and Burns on November 5 that, as Burns put it, ''we're only going to get what Morse wants to give us with or without the union?'' I find that this message from Smyth to the employees during more than an hour's discussion with them during working hours in the presence of their supervisor was designed to plant and fortify the idea that union efforts were futile, conduct violating Section 8(a)(1) of the Act. *Hilty Tank Corp.*, 273 NLRB 979, 982 (1984).

Impression of Surveillance, Withdrawal of Benefit, and Other Forms of Interference

The Respondent's supervisors and agents made comments to employees such as that they knew who one of the top dogs in the union effort was, that there was union activity going on, that it knew the employees had decided to go ahead and pursue or backup union-filed charges and objections to the election, and even the identity of the employee, John Caplinger, who wanted to get the Union in and become its president. Were these comments viewed in isolation they might reasonably be viewed in a less serious light, but such is not the case when viewed in context for in each instance, in its conversations with the employees involved, John Caplinger by Roeser on August 19, employee Rudolph Skropits by Comune who told him he understood employees were no longer interested in a meeting with Morse, discussed below, because of their union activity, and employee Steven Kortis, by Comune on September 18, before Kortis had expressed support for the Union and Comune interrogated him as described above, bluntly telling him he knew Kortis was one of the top dogs in getting the union activity started—in each instance the comments arose in a context of pervasive unlawful acts by Respondent which would reasonably fuel the perception in employees' minds that Respondent had a powerful motive for, and in fact was, maintaining close surveillance on the union activities of its employees, such was its animosity towards those activities. I find Respondent's conduct created the impression of such surveillance among its employees and that it thereby violated the Act. *Haynes Motor Lines*, 273 NLRB 1851, 1855 (1985); *Cardivan Co*., 271 NLRB 563 (1984); and see *Dutch Boy, Inc*., 262 NLRB 4 (1962).

The record shows further that Respondent withdrew an earlier granted benefit consisting of a new procedure by which employees could present grievances directly to Respondent, as described by a written memorandum to employees dated August 26, 1986. (GC–15.) The memo outlined the opportunity for employee representatives to present all ''complaints, grievances, ideas, etc.'' pursuant to the plan at a meeting scheduled for September 2. It is undenied that the promised new benefit was withdrawn by Respondent's vice president Comune a week or so later when he informed Skropits the letter was rescinded, or no longer effective, because there was union activity occurring in the plant and Respondent had learned about it since issuing the letter. By ascribing the loss of a clearly contemplated and promised substantial improvement in employment conditions—a means for the first time by which employees could present grievances through employee representatives to management for resolution to employees' union activities, Respondent clearly violated Section 8(a)(1) and (3) of the Act. *General Electric Co.*, 255 NLRB 673 (1981).

There is no doubt on this record that Respondent unlawfully screened applicants for employment for their union sympathies, so as to possibly prevent any increase in support for the Union among its plant force members. By company officials, and its longtime, 9- or 10-year close, daily association with the lawyer's firm representative John Vesalo, fully an agent with either express, implied, de facto, or constructive authority to do Respondent's bidding and the record is ample in such regard Respondent carried out a hiring procedure after the election in a studiedly administered antiunion manner.

Thus, Respondent's agent Vesalo told James Monroe during his interview January 9, 1987, for a welder's position that the Company just had a union campaign and was concerned about hiring prounion employees—that if Monroe asked, he was to say he was against the Union or they wouldn't hire him, and that Vesalo referred to a phone conversation with Comune during Monroe's presence as involving a ''guy'' with union ties who wasn't hired and that if Monroe had such ties, he wouldn't be hired. Vesalo repeated the Company was looking for hard-working mature nonunion individuals. When Monroe later met with Comune, the latter openly announced he was going to ask him some questions which were probably illegal, proceeding to ask if Monroe was involved in any union shops as described earlier in the finding of unlawful interrogation. During an interview by Vesalo of John Sparrow, Vesalo told him that Sparrow should just go down and talk to Jack Comune and say you have nothing to do with a union. When Sparrow met with Comune, further along in the hiring interview process, the latter took pains—as Respondent had instructed Vesalo to do with all the applicants—to describe the ''situation'' with the Union, and when Sparrow mentioned the name of a 10-year long friend and union supporter who had described the situation to him, Comune's attitude seemed to Sparrow to go from pleasant to angry—as discussed more fully below. Sparrow didn't get a job offer let alone a tour of the plant. Vesalo and Comune also individually interviewed employee applicant Linda Hodges, both inquiring into how she felt toward a Union during the hiring interview, Comune explaining the ''Union situation'' to her, that there had been an election which the Company won and asking whether Hodges specifically liked the Union or whether she did not like the Union. Comune also interviewed applicant Donald Fortney on December 15, 1987, inquiring into whether Fortney's prior place of employment was union or not. Vesalo was not asked to deny the specific employee testimony and admitted he ''may'' have told applicants that Respondent had ''always been non-union.'' Crediting employee accounts Vesalo clearly had apparent authority to act for Respondent, conveying information to prospective employees regarding Respondent's attitude toward the Union and thus constituting its agent. *Lapeer Foundry & Machine*, 289 NLRB 952 (1988).

Respondent never attempted to disaffirm or escape from the view that it had ratified the actions of Vesalo, portrayed credibly by the employee accounts, and the finding of agency relationship is therefore even further borne out. I find Respondent unlawfully screened employee applicants, some of whom are subjects of discussion below as alleged discriminatees, coercively interfering with their rights in violation of Section 8(a)(1) of the Act, such screening conduct sometimes occurring in the form of illegal interrogation described in further detail above, or in the guise of admonishments not to disclose union-supporting views, or as pointed references to the Respondent's decided preferences for nonunion types, or to the failure of a ''union-involved'' applicant to be hired because of such involvement. In short, the screening process went beyond unlawful interrogation and more broadly interfered with employee candidates' rights under the Act. *Minnesota Boxed Meat*, 282 NLRB 1208 (1987); and *Groves Truck & Trailer*, 281 NLRB 1194 (1986). In the same vein, during an interview of Ervin Potts, discussed more fully below, Respondent told Potts that wages would be, for some jobs, 20 to 30 cents more per hour if it wasn't for the union-filed charges against Respondent. By laying blame for lower wages on pending union charges, Respondent further violated Section 8(a)(1) of the Act. *National Micronetics*, 277 NLRB 993 (1985), and *Southern Illinois Petrol*, 277 NLRB 160 (1985).

Respondent's Unlawful Assistance to ESR

Midnight shift employee Gary Kunkle testified that 2 weeks before the November 7 election, Executive Vice President Jack Comune made it his practice to appear on the midnight shift—not Comune's regular schedule—about 3 a.m. and starting at one end of the shop work down to where Kunkle was, talking to each employee individually about the Union and the ESR, telling Kunkle he thought the ESR ''would be better for us . . . [than the Union,] that we could settle problems ourselves with Mr. Morse without a union.'' After Kunkle mentioned he hadn't received ESR ''stuff'' Comune left and returned shortly afterward, winked, and smiled at Kunkle saying, ''I'm going to leave this [ESR literature] sit here just in case somebody wants to read it'' and departed. Comune didn't deny Kinkle's account, merely testifying he never gave Kunkle any literature. Labor Relations Consultant Smyth, an admitted Respondent agent, told employee Catherine Henceroth at her work station on November 5 that the ESR could do more for her than the Union could, and her account of this, which was undenied by Smyth's vague testimony, occurred in the context of an unlawful promise of benefit described earlier. Further evidence of Respondent assistance to ESR occurred on October 28 when

employee Bobby Burns saw ESR supporters handing out ESR literature and heard Superintendent Roeser advising one of them, John Held, not to pass out all the leaflets ''to make sure he saved some and put them in by the time clock on [the] table so the night shift could get them.'' Burns also testified that Supervisor Jim Betts intruded into a conversation between Burns and ESR founder, Dave Hallam, telling Burns how the Union cost the Company 15 to 40 percent of its profits, holding a copy of the Laymen's Guide to N.L.R.B. and that Burns' best bet was to go along with ESR as they would do a better job of representing him than the Steelworkers. Betts was unsure and couldn't recall much when testifying. Employee James Monroe met efforts by Respondent to assist ESR in late January or early February 1987, when admitted Supervisor Steve Scibetta, in the context of a discussion over whether Monroe would get a raise, told him benefits of ESR were a lot better than what the Steelworkers Union could offer because you could work things out directly with a supervisor, promoting ESR to Monroe. Scibetta told Monroe he was doing real well and when leaving asked him to reconsider the idea of the in-house union. The record further shows that an employee leader in the ESR, Rudy Skropits, was in regular telephone contact with Vice President John Comune at Comune's home during the election campaign period—making between 10 and 20 such calls during which he transmitted information about the Steelworkers campaign. Comune also testified he received calls to his home from another ESR leader Debbie Vendetti. Given Comune's unusually energetic devotion to assisting ESR even to the extent of making 3 a.m. visits to shop employees where he solicited the support of individual employees on behalf of ESR, and gave out ESR literature, coupled with his pervasive other anti-Steelworkers Union conduct, I find it beyond reasonable dispute that those phone calls assisted, in both a narrow and broader sense, whether by information gathering or advising strategy, the ESR efforts to defeat the Steelworkers campaign by such plainly collaborative-in-nature contacts. All the foregoing occurred in the midst of fusillade-like disparagements of the Union, the leading employee union supporter, and other employee union leaders—personally scurrilous attacks and sustained disparagements of the unwanted labor union alleged responsible for employee losses, while ESR was held out to employees as the better way to go. Based upon the above, I find there is a clear preponderance of proof establishi'ng that Respondent unlawfully assisted the ESR in violation of Section 8(a)(2) of the Act. *Midwestern Mining*, 277 NLRB 221 (1985); *Ralco Sewing Industries*, 243 NLRB 438, 442 (1979); *Palmas Del Mar Co.*, 277 NLRB 71, 82 (1985); see also *World Wide Press*, 242 NLRB 346, 362 (1979).

Further Unlawful Assistance to ESR By Discriminatory Enforcement of Respondent's No-Solicitation Rule

In September Respondent adopted a rule forbidding employees ''to leave their work station or work area to discuss the union question with other employees.'' Respondent informed employees in writing they could discuss union campaign matters barring interference with work, before or after work or during breaks, according to uncontradicted employee testimony, in the early stages of the union campaign. But this rule as amplified in the company flyer was openly ignored by Respondent as to ESR employee activities in numerous instances and tightened beyond its letter and spirit against prounion employees.

Maintenance Supervisor David Schaufele in mid-September ordered maintenance department employees—all of whom had signed union authorization cards including the leading union activist John Caplinger, ''not to talk to anybody about nothing except company business and our job and he didn't want to see or hear of us talking to anybody at anytime while we were working about the union activity.'' Employees Gooding and Caplinger similarly decribed the meeting. On September 20, Plant Superintendent Roeser found Stephen Kortis, an early known leading union advocate, talking to fellow employee Ed Lashua and unprecedently issued a warning into his personnel file, Vice President Comune explaining inscrutably in response to Kortis later inquiring why with a smile only that, ''we felt justified'' and walking away from him. The two employees had been discussing Lashua's machine's performance. Employee Hobert Starcher, a member on the Union's organizing committee, described how, for the first time, after the election campaign started he was instructed to stay in his department, that he had to secure permission from a newly stationed supervisor before leaving for any reason and being told by supervision on two occasions to return to his department—the latter occasion involving Superintendent Roeser, who told the employee he disbelieved what Starcher, who was wearing a union hat and a Vote for the Union button, told him he was talking about with another employee without explanation. Yet by contrast employee Gooding, ordered to avoid such conduct by Schaufele, noted that he saw ESR supporters passing out literature in the campaign period, specifically John Held walking through a work area passing out ESR material to employees most of whom were working—including himself, in the cone room, machine shop—that there was ESR literature on the bulletin board, and by the timeclock. Held testified only that *once* Roeser had told him and a co-employee not to pass out literature while employees were working. Bobby Burns described how leading ESR members Marsha Humes, John Held, and others including Dave Hallam and Rudy Skropits were ''almost constantly campaigning'' around in the presence of supervisors, that Marsha Humes, an ESR leader, would clock out from plant 1 and come over to plant 2 and group together with John Held, Dave Hallum, and Rudy Skropits for up to an hour on the day of their ESR meetings, and that two supervisors were present on those occasions. ESR supporter Peggy Brumbaugh testified that she talked with employees regarding the union efforts to organize fellow employees as she went through the plant without being stopped or disciplined. Debbie Vendetti, another ESR supporter, did not deny passing out literature to employees stating only that she had only done so when *she* wasn't on the clock after being told she couldn't do so—leaving intact employee testimony that ESR supporters had solicited employees under the circumstances described. Thus, Robert Bougus in the preelection period saw Peggy Brumbagh, Marsha Humes, and three others named by him, in his area on working time talking in a small group 10 or 15 minutes, three of whom worked in his area, while the other two were in the bands department, so that the former worked the same hours as Bougus and got the same breaks. He testified that Supervisor Pat Chidester was in the area. Humes, who helped form ESR and, as the daughter of Super-

intendent Roeser made her own hours, testified she believed the rules allowed free talk so long as you didn't leave your work area.

Rudy Skropits recalled that ESR supporter Dave Hallum passed out ESR literature to employees still on working time—possibly with approval of his supervisor. Catherine Henceroth saw Brumbaugh and Humes—leading ESR members in the same period talking to other employees in working hours at bandsaws and packaging—that they were out of their area—bandsaws—two or three times. Barbara Caplinger testified she observed ESR campaigning by them as well, including in addition, Karen McFadden and Rita Kennedy—that the ESR representatives would stand around and talk 15, 20, or 30 minutes, out of their work area and that Brumbaugh and Humes left their work areas the most. Caplinger placed Comune and Roeser at the scene but her complaints over the ESR activities to Comune were ineffective. There was further testimony of a like genre by employees John Caplinger, Douglas Glantzer—who specifically identified ESR supporters Karen McFadden out of her department stopping and talking to people all through the shop—including him on ESR's behalf—Kortis—beyond his earlier testimony—and Michael Lombard and Edward Lashua were mutually corroborative on the matter. I find a settled attitude and range of conduct by Respondent in assistance and support to ESR documented earlier above was fortified further by Respondent's just-described clearly disparate enforcement of its no-solicitation rule in favor of ESR in further violation of Section 8(a)(2) of the Act and that by discriminating against prounion employees in terms of their conditions of employment—viz. the harsher application of said rule—Respondent also violated Section 8(a)(3) of the Act. *SMI Steel Inc*., 286 NLRB 274 (1987); *Castaways Management*, 285 NLRB 954 (1987); and *Midwestern Mining & Reclamation*, 277 NLRB 221 (1985).

Respondent's Unlawful Discipline of Employees

On February 6, 1987, Plant Superintendent Roeser saw employee union supporter Edward Lashua leaving another employee's department and asked him why he was outside his own department. After Lashua responded he had been on break, Roeser told him he was being warned and then angrily said, ''I don't care how many charges you file against me. . . . F—k your union. Punch out and go home,'' whereupon Lashua departed, losing several hours' pay. The record is clear that Roeser's actions were precipitous, ignored disciplinary procedures, and were totally unfounded; in fact, at the hearing Roeser changed reasons for the action to overstaying the lunch period in an obvious, yet unfounded effort to retroactively justify the unwarranted harsh discipline by shifting its rational. Respondent's actions against Lashua on October are further evidence of the unusual paranoia-like antiunion attitudes manifested by Respondent, when it again targeted Lashua for disciplinary warnings in an effort so obviously trumped up a to be pitiful though instructive of its deep animus. Lashua and a construction worker, who was well-known to him, had exchanged humorous wholly innocuous banter in a friendly and playful manner on October 20; that afternoon Roeser summoned Lashua to Roeser's office where Respondent accused Lashua of threatening the construction worker, who testified it was not his idea to file any complaint; and warned Lashua if there was a delay on the construction job or injuries, that Lashua would be punished, reprimanded, suspended or discharged, and could be brought up on criminal charges. The warning was entered in Lashua's file. Respondent's animus-fueled actions against Lashua are most decidedly proven to be illegal actions based on falsely exaggerated circumstances for the purpose of harassment in clear violation of Section 8(a)(1) and (3) of the Act. *Woodcliff Lake Hilton Inn*, 279 NLRB 1064, 1070 (1986); *Power-Seal Corp.*, 276 NLRB 357 (1985); and *American Model & Pattern Co.*, 277 NLRB 176, 182 (1985).

Shortly after Vice President Comune accused Steve Kortis of being one of the top dogs in the employees' organization for the Union on September 18, described above during a coercive confrontation, Superintendent Roeser found Kortis talking to Lashua on September 20 at 6:30 a.m. when Kortis had approached Lashua to discuss whether better caps for Kortis' welding work were available or whether there was a problem with the tapmatic machine. Roeser asked if they were on company time, told them to get back to work, and left. The two immediately complied. On September 22, without explanation, Roeser gave Kortis a written reprimand for the ''incident'' on September 20 and left. Then Kortis later protested to Comune on October 6, Comune told him he could have written up three or four others stating with a smile that they felt justified in writing him up. This was Kortis' first reprimand in 6 years, and came within days of his leading involvement with the Union became admittedly known to Respondent; moreover, Kortis had never before been required to seek permission to leave his area to pursue a production-related problem. As a senior experienced welder with a spotless record, it would have Kortis' conduct, leaving as a proper inference, that Roeser was more interested in penalizing one of the Union's leading employee supporters than in evaluating the circumstances properly before deciding on any discipline at all—and this, by the way, in stark contrast to the freedom accorded the heavily assisted ESR supporting employees documented above. The Kortis' reprimand was patently discriminatory. *United Merchants & Mfrs*., 284 NLRB 135 (1987); and *Wayne W. Sell Corp*., 281 NLRB 529 (1986).

The Reprimands and Suspension of Robert Baugus

Baugus, an early union supporter as admittedly known by Comune and Roeser, wore union hats, T-shirts, and buttons. Consultant Smyth, as detailed above, told employee Henceroth that Baugus was going to be discharged on November 5 for campaigning for the Union. He had a good production record but was twice disciplined for the petty offense of not starting at the stroke of 7 a.m., even though he was in the department just a few feet from his machine and another employee was regularly not at his work station without penalty. Contrary to Respondent, there was no record in the other employee's file of any discipline. The discrimination towards Baugus increased on May 21, 1987, when he was disciplined for alleged gross insubordination which turned out to be based on Baugus merely jokingly telling another employee, known by him to work overtime often, that she soon would be working 16 hours. Respondent failed to explain why such was ''gross insubordination.'' In another incident, Baugus, just outside the restroom enroute inside, was met by Roeser who scolded him for using the facility then, rather than on lunchbreak, took him to his office, told him

he was a pain in the butt, and should have been fired before and angrily told him to punch out and go home, referring to Baugus being seen talking to another employee away from his machine on another occasion. Respondent later allowed Baugus to return *on condition* he sign a last-chance letter acknowledging clearly erroneous alleged prior misconduct by Baugus, the petty infractions involving minutes at most, the alleged ''gross insubordination,'' and other unsubstantiated entries dealing with production which were shot through with nonrepresentative periods, vacation time, failure to account for varying piece sizes—Mueller acknowledging himself that the record could have been better if the period reviewed had been longer—and a warning on the heels of one of Baugus' best production efforts wherein he had actually earned a bonus of $161. (CP–17; GC–22.) Moreover, Mueller himself admitted Baugus didn't have a production problem, that Respondent had not reviewed the record prior to the suspension, and the action was not in accord with its progressively staged disciplinary system. There was clear evidence of much more tolerant treatment being accorded by Respondent to a decidedly more misbehaving employee working under Baugus' supervisor—Chidester—in the same timeframe in stark contrast, as well as to the other employee noted earlier who was consistently not at his work place on time without disciplinary warnings being recorded against him. I find a clear preponderance of proof in the record supports the unmistakable view that Respondent's above-discriminatory actions against Baugus are violations of Section 8(a)(1) and (3) of the Act. *Magnesium Casting Co*., 250 NLRB 692, 711 (1980); and *Production Plated Plastics*, 247 NLRB 595, 605 (1980).

Warnings for Absenteeism and Productivity

Respondent issued reprimands and warnings against open union advocate welder Stephen Fowler shortly after the election, on November 24, for alleged excessive absenteeism, and again on December 11, 1987, for allegedly insufficient production. The evidence convincingly shows that neither reprimand was justified and that the actions were unlawful.

Regarding the warning over productivity, it is readily apparent that Respondent's basis for action is wholly unsupported as painstakingly and thoroughly detailed in the briefing by counsel for the General Counsel and the Charging Party. In sum, there was no clear rule regarding what Respondent considered satisfactory production, Fowler's reported record looked much worse—but only part of the time at that—for fully explained and undeniable reasons than it actually was, and in many instances Respondent's own records or its interpretation of them were erroneous. Respondent ignored the strongly mitigating factors as well as the satisfactory performances demonstrated by Fowler and undenied in the record, compared production numbers of another welder on Fowler's machines without taking into account the undenied poor quality of his work compared to Fowler, whose rating for quality was above average while productivity was average, ignored the undenied wretchedly poor condition of Fowler's continuously unrepaired machine, ignored the sizes of the pieces left to Fowler to produce after more senior employees got their choice of the easier to produce smaller pieces, ignored Fowler's achieving a triple bonus such was his productivity, and Fowler's overall rating of ''above average'' in Respondent's own rating system. (GC–81.) Respondent's omissions of these details and its failure to render a fair evaluation are explained by the Respondent's meeting with Fowler on December 11 shortly after Fowler had filed charges against Respondent protesting its harassment and Respondent called him in with Mueller and Roeser during which the warning, unprecedented since it rejected the need for any lesser discipline, as called for normally in Respondent's system for discipline, threatened summary discharge against Fowler. Mueller told Fowler, ''Evidently, I have a problem here with your production, Chuck (Roeser) has come down several times and tried to discuss it and all you did was turn around a [sic] *file a charge on us and we didn't appreciate that*.''

The warning against Fowler for alleged excessive absenteeism is equally unfounded since Respondent's implementation policy on the record was so ambiguous as to approach invisibility, 6 days being considered ''ecessive,'' Fowler's absences were documentedly excusable under plant practice for medical reasons in five or six instances, other employees compiled much ''worse'' records without encountering discipline, indicating discriminatory application of whatever the rule was in Fowler's case, Respondent thereafter required Fowler unlike others to submit medical excuses upon each absence, rather than for those in excess of 3 days, and clearly failed to adjust Fowler's record based on the medical excuses offered by him preceding the discipline. I find that both warnings have been demonstrated to arise from Respondent's animus toward a known union adherent such is the provenly unreliable asserted basis for the discipline and the strong basis for inferring the presence of an unlawful discriminatory motive arising from the circumtances noted herein. *Lancer Corp*., 271 NLRB 1426 (1984); and *Delta Faucet Co*., 251 NLRB 394, 400–404 (1980).

Respondent also issued a warning for allegedly excessive absenteeism against chief employee union supporter and election observer for the Union John Caplinger on January 9, 1987. Respondent, as described above, had targeted Caplinger for physical assault, deprecatory slurs, and other forms of coercive interference. Caplinger's attendance record was free of any warnings or discipline prior to January 9, but Respondent issued a disciplinary warning then, using Caplinger's return to home after 4 hours work; on the night shift due to illness, as the reason. Respondent claims that it believed Caplinger had gone home early from work, albeit with permission from his supervisor first being properly obtained, for the purpose of being able to go deer hunting, and that's why the discipline was issued. The Respondent failed to establish by any probative evidence, however, and this is admitted that Caplinger wasn't genuinely ill when his supervisor gave him permission to go home without pay, or that Caplinger went hunting the next day either during his normal shift hours or at anytime. In my view, there wasn't even reasonable cause for Respondent to believe he had done so given the incredibly, contradictory testimony of Respondent witness describing the surrounding circumstances in overwhelming yet totally unproductive detail; acccordingly, I do not see any reason whatsoever which would reasonably trigger the imposition of a disciplinary warning founded on an employee's otherwise entirely valid, medically based, and specifically excused absence from the second part of his work shift. The record is so replete with evidence concerning nonunion and other employee records for absenteeism including an employee election observer for the Company of a far

worst nature, that the action against Caplinger sticks out even further like a sore thumb, especially since illnesses were not, on this record, considered unexcused absences in all cases. Bristling with animus, Supervisor Schaufele told Caplinger when he reported for work on his next tour of duty, ''We know you went home early to go hunting and if we could prove it, we would have grounds to dismiss you.'' In the normal scheme of things, there would be no valid reason for Respondent to raise the intimidating spectre of discharge against an employee who had been authorized to excuse himself from work due to illness, especially when, as here, the Respondent admittedly had no proof of employee wrongdoing unless some other motive fueled Respondent's action, which is demonstrated amply above including by Respondent's failed efforts to support the discipline. I find by its conduct that Respondent discriminatively disciplined Caplinger because of his union activity in further violation of Section 8(a)(3) of the Act. *Confort & Co.*, 275 NLRB 560 (1985); *Ohio New & Rebuilt Parts*, 267 NLRB 420, 433–434 (1983); *Superior Warehouse Grocers*, 277 NLRB 18, 25 (1985); and *Hedaya Bros.*, 277 NLRB 942, 945 (1985).

Doug Glantzer's Paid Lunch Period

The record shows that Respondent singled out Doug Glantzer for punishment due to his active, vocal support for the Union on April 22, 1987, when it eliminated Glantzer's paid lunch period while maintaining the benefit for others in the same department and, indeed, for another employee who operated the very same machine as Glantzer. This conclusion is based on a clear, strong preponderance in the evidence. At the hearing Respondent offered three different reasons for its action, none of which hold up to analysis. The alleged reason, that Glantzer's machine could be shut down so that there was no need to keep it running during the lunch period, was proven false as other employee machines in Glantzer's department could also be shut down and anyway what about the undenied fact that when other employees in the same department, as well as a new hire who operated the same machine, did the same work as Glantzer, they were paid for their lunch period but Glantzer was not? The next alleged reason for admittedly cutting the benefit for Glantzer was due to the fact that his machine was moved to another area but this was not shown to be any justification whatever, since others who worked on the machine continued to have the benefit and why would that matter anyway? Finally, in its poor defense, Respondent alleged it removed Glantzer's paid lunch because of other employee complaints, an unproven and unprecedented action for Respondent, indeed. The disparate treatment accorded the only open advocate for the Union in his department is thus left unexplained by Respondent's woefully weak parade of shifting reasons, and the absence of any shred of justification for Respondent's conduct, coupled with Glantzer's known activity, and Respondent's steadily continuing animus-fueled discrimination against employees, including deep into the postelection period leads to the inescapable conclusion that its conduct was motivated by discriminatory reasons and that it thereby violated Section 8(a)(1) and (3) of the Act. *Hendrickson Bros*., 272 NLRB 438, 457 (1984); *Scotch & Sirloin Restaurant*, 269 NLRB 436, 443 (1984); and *Teamsters Local 164*, 267 NLRB 8, 12, 17 (1983).

The Refusals to Hire John Sparrow and Ervin Potts

The complaint alleges that Respondent refused to hire John Sparrow and Ervin Potts for discriminatory reasons, namely, out of Respondent's heavily documented determination not to employ union-supporting individuals or those who even might become so inclined, which intentions were behind Respondent's unlawful screening of job applicants demonstrated above.

The record shows that Respondent's agent Vesalo approved Sparrow's employment application readily on January 9, 1987, Vesalo informing Sparrow there was a job opening at Morse and ''you should have a job.'' Sparrow was experienced and qualified by past employment, which was terminated when prior companies experienced operational changes outside Sparrow's control, for openings badly needing filling at Morse. Vice President Comune told Sparrow at his interview later about benefits and work shifts, including that there was an opening on the first shift which Sparrow could have. As the discussion continued an objective view is that things were going quite well for Sparrow's efforts to secure employment until, during further conversation about Sparrow's past employment, Comune—an established ritual for him—brought up the union problems being experienced by Respondent and Sparrow told him he knew all about them from Morse employee Hobie Starcher, a 10-year-long pretty good friend and former coworker with Sparrow at Timken Steel. Starcher was known to Comune as one of the original seven employees initiating the employees' organizational efforts for a union. Sparrow, in a possible natural gesture to save his employment prospects when he heard Comune's tone of voice go from friendly to angry in an instant, told Comune he didn't share Archer's views on unions, but the effort by Sparrow was to no avail as Comune ended the interview minutes later. After Sparrow left, he (Sparrow) called Vesalo who expressed shock that Respondent had not hired Sparrow. Respondent claimed it refused to hire Sparrow for the sole reason that he had held too many positions in the past, yet the record clearly shows that Respondent knew the reasons for such four job changes—save for one as a dishwasher—ended for economic reasons at those companies, not due to Sparrow's conduct. There is no doubt Respondent admittedly needed the job filled, and knew very well that Sparrow was well-qualified. Further, the record shows that Respondent hired other applicants who possessed no relevant prior skills or experience, and other applicants who had over three employers in 3 years. I am convinced by Respondent's failure to explain by any rational means why the well-qualified applicant Sparrow was, at the time he disclosed a friendship with a known union adherent, rejected in a summary and angry manner for employment, that the only reason was that relationship. By applying different standards and by acting on antiunion animus in rejecting Sparrow for hire, Respondent further violated Section 8(a)(3) of the Act. *Jones Plumbing Co*., 277 NLRB 437 (19885); *Food & Commercial Workers Local 152 v. NLRB*, 768 F.2d 1463, 1475 (D.C. Cir. 1985), *Chancellor Transportation Co*., 282 NLRB 887 (1987); and *Rogers Cleaning Contractors*, 277 NLRB 482 (1985).

Ervin Potts worked for Dyneer Company as an experienced welder, press operator, and furnace operator for many years until the company closed down and moved away. On January 14, 1987, Potts applied for employment at Respond-

ent's plant, armed with a glowing recommendation from Dyneer, stating that Potts' ''dependability, conscientiousness, ability to work unsupervised, attitude toward his fellow employees and supervisors, and qetting the job done whatever the task, has made Ervin an *outstanding* employee.'' CP–4 (emphasis added). Adding further to Potts' prospects for being well-received were recommendations or references by two former coworkers at Dyneer by then employed by Respondent, whose supervision knew them to be good employees and not to be supporters of the Union.

At the interview on January 17, Vice President Comune—in charge of the ''whole ball of wax,'' including hiring, according to President Morse—told Potts Respondent was thinking of adding a third shift. He also told Potts there were three or four openings and it is unquestioned that Potts was qualified and that this was readily apparent to Comune, to fill an opening; in fact, Comune, after reviewing Potts' application, background, and recommendation, made the determination that he was qualified for the position of utility operator. Comune then asked Potts how soon he could start and, I find, whether Potts had to give any notice at a current position and Potts said no. Comune tried to dodge, on examination, but I find he in fact indicated to Potts that he would be placed in the utilityman classification, did not express the need specifically for a further interview and undeniably asked Potts for his shift preference, telling him his rate of pay would be around $5 an hour and when his insurance coverage would begin. Comune testified he believed Potts was a good prospect for employment; in fact Comune admits he was actually enthusiastic about him. Comune told Potts he wanted Superintendent Roeser to give Potts a tour of the plant the following Monday, January 19, and gave Potts one of his business cards, Comune himself testifying ''he [Potts] may have perceived by my conversation that he most likely would be hired.''

Potts, who testified he believed he had been hired, was strongly encouraged even further to hold such belief when he arrived for the plant tour on Monday and was greeted by Vice President Comune, who shook his hand and, in response to Potts' question whether he still had a choice of shift, told Potts ''no, you're going to be on night shift.'' Potts then went to Roeser's office for his tour, a mere formality in Respondent's orientation procedure rather than, on this record, any kind of hurdle or test for further evaluating candidates for employment because by far the overwhelming majority of candidates for employment who reached the plant tour stage were hired by Respondent. In short, at this point, from all that appears, including Comune's preeminent role in screening and hiring and his favorable determination, Potts was assured of a job.

After a few minutes long walk through the plant—a pleasant one in Potts' view—during which Roeser described its area dimensions, Roeser showed Potts one of the tasks of the utilityman's position which Potts expected to fill and described the paperwork entailed. Then it happened. Roeser and Potts approached John Caplinger, the leading union supporter in the plant, while he was working on a machine, and Caplinger, an outdoor sports-connected acquaintance of Potts, greeted Potts asking him how he was doing and Potts exchanged polite similar comments, within sight and hearing of Roeser. Revealingly, in my view, Roeser at first in examination denied even that Caplinger's name ever came up during the tour but further examination led to his admission that Potts did mention that Caplinger was a customer at a bait store where the two often met. In any event, the two, Roeser and Potts, walked a short distance when Roeser asked, ''Do you know that guy?'', and Potts admitted he, Caplinger, was one of the guys that comes in to our (bait) shop. Potts testified that Roeser didn't say ''hardly anything after that'' the two returning to Roeser's office and Roeser telling Potts the surprising news that he (Roeser) would now have to see which job was best qualified for each guy, a puzzling comment given Comune's reference to the utilityman position. Potts never got the job or a call back; eventually being told by Comune things had gotten slow as the reason—an assertion flatly belied by significant hirings of less qualified candidates for employment during the same time period or shortly after Respondent's suddenly executed about-face rejection of Potts. At the hearing, Respondent's purported reason for not hiring Potts, who had diligently tried to discover the reason for Respondent's abrupt switch in plans to hire him, was because, Roeser testified, Potts had ''lagged'' behind Roeser during the tour, which indeed was news to Potts who denied any such conduct. It is undenied that Roeser never advised, or cautioned or gestured to Potts to catch up, or that he would prefer it if Potts were to show a little more interest or hustle. No witness is able to corroborate Roeser; in fact, those able to testify within the confines of their ability to observe the two deny that Potts was lagging behind. Of course, it defies logic in the circumstances, wherein Potts is trying his best to find work, is recommended by two former coworkers, goes through a carefully detailed interview with the company vice president which he comes through with flying colors, is early for the tour inquiring whether he can have his choice of shift, and otherwise is presenting himself as best he can and doing a good job of it that he would then hang back during a tour evincing lack of interest and place all his efforts at risk by alienating the plant superintendent. Potts didn't lag behind and didn't fail to show interest in employment at Respondent's plant at any time, and I do not accept a word of Roeser's inconsistent, argumentative, guarded, patchy recollection. Both asserted reasons being totally unworthy of belief, I find Respondent in an action consistent with its settled antagonism towards employee organizational efforts and paranoia-like suspicions so amply evident in this case went so far as to deny Ervin Potts his chance at a job because he manifested acquaintanceship—possibly even a sports-based friendship—with the most active employee union supporter in the plant, Respondent perceiving possible union sympathies thereby violating Section 8(a)(3) of the Act. *Well-Bred Loaf*, 280 NLRB 306 (1986); *Airport Distributors*, 280 NLRB 1144 (1986); *NLRB v. Health Care Logistics*, 784 F.2d 232, 237 (6th Cir. 1986); and *Chancellor Transportation Co*., supra.

The Discharges of James Monroe and Dan Hetrick

After subjecting James Monroe to unlawful acts during its screening procedures, as detailed above, Respondent hired Monroe on January 19, 1987, as a welder. The record supports a fair inference that Monroe had passed the Respondent's litmus test by not appearing to be union-oriented. Monroe quickly established himself to be a fine employee, Roeser himself testifying Monroe's attendance record was extremely good, and Vice President Comune admitting Monroe's piece-

rate production was ''better than other guys.'' A coworker, Steve Fowler, testified that Monroe's performance on the welding maching was ''exceptionally good for a short time on the job'' and Respondent admitted further, through Comune, that it had no complaints about the quality of Monroe's work, there were no performance problems and he wasn't insubordinate.

After arranging to pay Vesalo a referral fee of $1248, Monroe began work at the plant and during the course of the day happened to mention to other employees his understanding that he would receive a wage increase to $7 or $8 per hour after 90 days. The employees indicated no one received those wages and he must be mistaken.

Later, on January 21, Comune pointedly advised Monroe that—everything gets back to him and denied promising Monroe such a raise. Monroe, after first offering his beliefs as to the matter, told Comune he desparately needed the job and would live without the increase—at no time implying he would quit and informing Comune he, Monroe, would drop the matter. Comune nevertheless noted a bad-attitude comment into Monroe's personnel file, based solely on Monroe telling other employees he was going to be paid $9 an hour. Monroe also made clear to Vesalo in a later phone call that he would accept the situation and Vesalo told Comune Monroe wouldn't be complaining. Comune several days later approached Monroe and told him he felt bad about the earlier conversation and that Monroe would probably get a 50-cent raise on evaluation after the 30-day period; and that Monroe would be entitled to incentive pay, around $1.50 an hour. Monroe began to attend union meetings following the above, and in a conversation with Supervisor Scibetta on February 2, who approached Monroe and promoted ESR unlawfully, as described above, Monroe mentioned he had been attending Steelworkers Union meetings.

On February 3 Monroe agreed with John Caplinger's request that he tape a meeting the Company had scheduled for new employees and his assent to do so was commented on by at least a dozen other employees, including one known to speak freely around the plant. Monroe never taped the meeting because on February, only the day after he had agreed to do the taping and 2 days after informing Scibetta he had attended union meetings, Respondent's vice president Comune, the one who earlier claimed to Monroe that everything gets back to him, called Monroe at home at 4:30 p.m., in the middle of the pay period and before the probationary period usually accorded new employees had expired, discharging Monroe, telling him the reason for during so was because—a first expression—Monroe's work was ''inadequate.'' Comune later in the conversation, after Monroe protested that his work was good, told Monroe the reason was that ''*he [Comune] was still uncomfortable about the argument concerning money, in light of all the problems that the Company was having with the union.*'' The fact that Respondent in the days before Monroe's disclosure of prounion activities had termed his work ''great,'' that he was doing a ''good job,'' and was a ''good worker'' render the first assigned reason a palpably false one. The second assigned reason—repeated at the hearing—is totally self-indicting for it attributes discharge to concerted activity by Monroe in merely discussing his wages with other employees and is thus unlawful, and further attributes as a contributory cause union problems, a still further damaging admission of an unlawfully discriminatory motive. The further undenied fact that Respondent presented shifting reasons for its conduct, failed to explain the rushed timing for its action in mid pay period, abruptly before the start of Monroe's scheduled shift, and prior to completion of his probationary period—all for nonwork-related reasons—especially true since Monroe had accepted Respondent's position on the wage matter and quickly established a ''great'' work record—militate strongly to support the conclusion that it was Monroe's protected and corrected activities including conduct in support of the Union, as known to a company harboring a great deal of antiunion animus that led to Monroe's discharge. I make the conclusion without hesitation that Respondent thereby violated Section 8(a)(1) and (3) of the Act. *Lemon Drop Inn*, 269 NLRB 1007, 1018 (1984); *David's*, 271 NLRB 536, 562 (1984); *Kranco, Inc*., 228 NLRB 319 (1977); *Yaohan of California, Inc*., 280 NLRB 268 (1986); *H & G Wall Baking Co*., 272 NLRB 100, 1016 (1984); and *D & D Distribution Co*., 277 NLRB 909 (1985).

The unlawful discharge of Dan Hetrick on March 20, 1987, is strongly established by the record, for once again Respondent's asserted reason for its action is on its face unworthy of any belief. The briefing by counsel for General Counsel and Charging Party, in an exemplary, wholly persuasive and thoroughgoing manner, fully supports the complaint allegation based on a virtual catalogue of painstakingly arranged details and legal analysis supported by the record and by law, which I find unnecessary to wholly duplicate herein, such is the clarity of violation.

Suffice it to note that Hetrick was a machine operator for 9-1/2 years who compiled an extraordinary record of production during his tenure, coupled with a superb attendance record and an unparalleled work ethic among his coworkers. He held two or three jobs, was considered by Respondent to be extremely conscientious and productive and earned the highest bonus in the plant. He worked 60 hours a week including 10 hours daily and 8 to 10 hours on Saturday. Hetrick openly supported the Union, wearing union buttons, union hat, and a union shirt seen by Chuck Roeser on the day of the election, as well as by Supervisors Schaufele, Borkwin, and Jim English, Hetrick's immediate supervisor. In the previous October, Vice President Comune interrogated Hetrick as to his feelings toward the Union, Hetrick explaining he thought it was necessary for the employees. Hetrick openly associated with the leading employee supporters at the plant, the Caplingers, Lashua, Cosler, and Bob Burns and company consultant Smyth testified Hetrick was identified to him by management as a union supporter. The extraordinary antiunion animus of Respondent has already been amply noted, but not before Hetrick's discharge was it so clear just how far Respondent would go to find a reason for discharging an employee such as Hetrick to discourage employees' organizational efforts.

Hetrick and a co-employee on his machine the shift prior to Hetrick's agreed—I find with management knowledge and approval—to their shift times. One day, March 19, 1987, in an honest mixup, I find between the two employees, Hetrick appeared 1-hour early for work. After a brief discussion, the other employee opted to leave early by 1 hour, without, I find, any hint of pressure by Hetrick. The employee testified he was tired anyway and he made up the hour the next day or so; in all, a totally innocent, production-loss-free incident

with neither involved employee causing each other any loss, or causing any problem whatsoever. Respondent promptly fired Hetrick the next day and took no action against the other employee nor did it even bother to get Hetrick's version of the nonevent; alleging he had changed the 30 hours of work. To buttress its trivial transparently false alleged reliance on this wholly unsupported interpretation of events, Respondent dredged up stale, trivial, and innocuous past comments it had covertly entered into Hetrick's file and pointed to them, especially a last-chance agreement dated November 5, 1985, which Hetrick had signed arising from an incident between Hetrick and a supervisor between whom there was preexisting personal enmity. In addition, there was an earlier incident when Hetrick refused for a time to operate a machine where the dead stop first needed testing for safety reasons, and Hetrick believed he was not to do maintenance work, but kept working another machine throughout resolution of the problem. Upon careful evaluation, it is clear to me that Respondent blew the innocuous events on March 19 way out of proportion in order to trump up a false charge against Hetrick—no other interpretation is possible—in order to discharge him and discourage union activity by its employees. Such was the incredible pettiness of Respondent's claimed misconduct of Hetrick, such was its sinister and secret procurement of a statement from the other employee who had no complaint whatsoever, and such was the harmless nature in the innocent mixup that Respondent—not even bothering to get Hetrick's version—clearly tortured the facts to manufacture a phony pretext. The action, moreover, was nearly an unprecedented form of discipline at this plant, against, moreover an employee who would ordinarily be considered to be worth his weight in gold such was his production, attendance, and work record. Counsel for General Counsel established, by a clear preponderance of proof, a prima facie case for finding that Respondent discharged Hetrick because of his support for the Union, the only possible interpretation of these events, while the earlier election results were under consideration in the objections case and there was the prospect of a rerun election being conducted. Respondent failed to raise a scintilla of proof tending to even suggest it would have discharged Hetrick even aside from his support for the Union. I find Respondent's action completely discriminatory in nature and in violation of Section 8(a)(1) and (3) of the Act. *Wright Line*, 251 NLRB 1083 (1980); *Fox Art Theaters*, 278 NLRB 812, 816 (1986); *Autoglass & Upholstery Co*., 264 NLRB 149 (1982); and *American Thread Co*., 242 NLRB 27 (1979).

IV. THE REMEDY

Based on the foregoing findings of fact and conclusions of law detailed in section II, above, wherein it is clear, and I find, that Respondent's unlawful conduct affects commerce within the meaning of the Act, the following remedy is in order.

Having found that Respondent has engaged in widespread unfair labor practices, Respondent shall be ordered to cease and desist therefrom and to take certain affirmative actions designed to effectuate the policies of the Act. With respect to the discharges of Monroe and Hetrick, I shall recommend Respondent be ordered to offer them unconditional reinstatement, and that Respondent offer employment to Potts and Sparrow; that Respondent reinstate Glantzer's paid lunch, and refund Lashua for his unlawful suspension, and as to each such employee make them whole for all wages lost by them as a result of Respondent's unlawful discrimination against them, such amounts to be computed on a quarterly basis with interest thereon on and after January 1, 1987, being computed at the ''short-term Federal rate'' for the underpayment of taxes as set out in the 1986 amendment to 26 U S.C. § 6621, in accordance with the Board's decision in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Interest on amounts accrued prior to January 1, 1987 (the effective date of the 1986 Amendment to 26 U.S.C. § 6621), shall be computed in accordance with *Florida Steel Corp*., 231 NLRB 651 (1977). Since the widespread misconduct engaged in by the Respondent clearly ''demonstrates a general disregard for [its] employees' fundamental statutory rights,'' I shall recommend a broad cease-and-desist order. See *Hickmott Foods*, 242 NLRB 1357 (1979).

It is readily apparent, moreover, that Respondent's pervasive, serious, and continuing widespread unfair labor practices prompted by the Union's organizing campaign and the election petition impacted heavily on the relatively modest-sized work force from August 1986 deep into the post-election period up to the time of the hearing, when Respondent continued to unlawfully screen job applicants weeding out those seeming to hold prounion sympathies while hiring a substantial number of new employees who passed through the unlawful procedure. The sheer volume of its illegal acts against the small work force, concentrated in a short period of time—August until the election early November—(and thereafter) committed by Respondent's highest officers and representatives—as well as to a lesser extent first-line supervision—is a most telling circumstance supporting my view that Respondent's conduct, designed to discourage support for the Union, had a marked tendency to undermine the Union's established majority status and prevented any possibility of holding a fair election on November 7, 1986. Respondent coerced its plant force members, inter alia, by interrogation, creating the impression of surveillance, attributing employee losses and frozen benefits to the Union deriding the Union and its employee supporters scathingly, threatening reprisals against employee union supporters, unlawfully promising benefits, strongly asserting the futility in employee self-representation efforts, soliciting grievances, withdrawing benefits, discriminatorily screening job applicants, warning, disciplining, suspending, refusing to hire, and discharging employees; encouraging assault on a leading employee union adherent, discriminatorily enforcing a no-solicitation rule, and rendering unlawful assistance to a rival labor organization; in most instances Respondent committed several acts within each of the categories cited. Given the hallmark violations herein, the discharge of union supporters, and threats thereof, the numerous acts of discriminatory discipline, the discriminatory suspension of an employee union supporter, and the unlawful take-away of an employee's paid lunch; the discriminatory refusal to hire employee job applicant's perceived to be possibly sympathetic to the Union; and the discriminatory application of its solicitation rule, Respondent has by these and other acts described mostly destroyed any semblance of hope that traditional remedies can sufficiently erase the continuing impact of such unlawful conduct on the electorate so as to make a fair election possible. Whether one concludes that the Respondent's conduct is in the ''out-

rageous and pervasive'' category, or is in the second category involving, ''less extraordinary cases marked by less pervasive practices which nonetheless still have the tendency to undermine strength and impede the election processes'' as described by the Supreme Court decision in *NLRB v. Gissel Packing Co*., 395 U.S. 575 (1969), it is clear that a bargaining order remedy is warranted for such conduct is at least in the second category. Respondent's antiunion campaign included a barrage of violations of Section 8(a)(1), (2), and (3) against employees, committed by its top officials, and included company literature broadcasting unlawful contents to voters, including Respondent's message, as well, that employment benefits were frozen given the Union's problems. I note further, as has the Board, that, ''Given the swiftness with which the Respondent reacted to the organizing effort, the likelihood of the Respondent engaging in further illegal conduct is clearly present,'' in reaching this conclusion, and ''to withhold a bargaining order here would reward the Respondent for its own wrongdoing.'' *299 Lincoln Street, Inc*., 292 NLRB 172 (1988). There is every reason to believe that the employee force, which continued to be barraged by Respondent's egregiously unlawful conduct well into the postelection period as Respondent continued to unlawfully screen out union adherents in its hiring process, broadcasting its ''union speech'' to all job applicants, a substantial number being involved, will long remember all too clearly the Respondent's interference with their rights so as to render a fair election a most improbable prospect. *Granco, Inc*., 276 NLRB 1450 (1985); *Horizon Air Services*, 272 NLRB 243 (1994); *Long-Airdox*, 277 NLRB 1157 (1986); *Laird Printing Co*., 264 NLRB 369 (1982); and *Downtown Toyota*, 276 NLRB 999 (1985). Further, contrary to Respondents' contention on brief that a bargaining order is not warranted absent a union demand for recognition, I find it entirely appropriate that such an order issue and that Respondent's duty to recognize and bargain be dated from September 11, 1986, forward, at which time the Union had established its majority status and Respondent had already engaged in numerous violations of employees' rights under the Act. *Lapeer Foundry*, supra.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[4]

ORDER

The Respondent, M. K. Morse Co., Canton, Ohio, its agents, successors, and assigns, shall

1. Cease and desist from

(a) Coercively interrogating employees concerning their feelings about the United Steelworkers of America, AFL–CIO–CLC, or any other union.

(b) Creating the impression that employees' union activities are under surveillance.

(c) Deriding the Union or its employee supporters as liars or by the use of profane descriptions.

(d) Threatening employees with specific or undefined reprisals including layoff and hurting of employees if they support the Union.

(e) Soliciting grievances and promising employees benefits including a supervisory position or correction of grievances if they withdraw support from the Union.

(f) Blaming the Union for lost or frozen levels of employee benefits.

(g) Withdrawing benefits from employees because of their support for the Union and indicating employee union efforts are futile.

(h) Assisting Employees for Self-Representation.

(i) Discriminatorily enforcing a no-solicitation rule in a manner favorable to Employees for Self-Representation and against the United Steelworkers of America, AFL–CIO–CLC, or any other labor organization.

(j) Seeking to induce any employee to inflict bodily harm on any employee because of said employee's support for the Union.

(k) Discouraging employees from support of, or membership in, the Union, or any other labor organization by discriminatory discharge, refusal to hire, suspension, withdrawal of benefit, pretextual disciplinary warnings and reprimands, or last-chance agreements because of said employee's union activities.

(l) Telling employees the cost of Respondent's defending against charges filed with the National Labor Relations Board comes out of their wage increases, future income, or pocketbooks.

(m) Discriminatorily screening job applicants in order to discourage support for the Union.

(n) In any other manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed by the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer to James Monroe and Dan Hetrick immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of earnings suffered by reason of Respondent's unfair labor practices in the manner set forth in the remedy section of this decision.

(b) Offer immediate employment to Ervin Potts and John Sparrow and make them whole with interest for lost earnings in the manner set forth in the remedy section of this decision.

(c) Reinstate employee Doug Glantzer's paid lunch benefit and make him whole with interest as aforesaid.

(d) Rescind the suspensions imposed on Edward Lashua and Robert Baugus and make them whole with interest for lost earnings in the manner set forth in the remedy section of this decision.

(e) Expunge from the records of all above-named employees, as well as from the records of all other employees hereinabove found to have been issued unlawful warnings, reprimands, or discipline, in this decision, Steve Kortis, John Caplinger, and Steve Fowler any reference, where applicable to said employee as described hereinabove to their discharge, warning, reprimand, suspension, failure to be hired, or last-chance agreement, and notify them in writing that this has been done and that the evidence of the unlawful action taken against them as identified herein, will not be used as a basis for any future disciplinary action against them.

[4] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(f) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll recods, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this order.

(g) Recognize and, on request, bargain collectively with United Steelworkers of America, AFL–CIO–CLC, as the exclusive collective-bargaining representative of the employees of Respondent in the appropriate bargaining unit described above.

(h) Post at its Canton, Ohio facility copies of the attached notice marked ''Appendix.''[5] Copies of the notices on forms provided by the Regional Director for Region 8 after being signed by Respondent's authorized representative, shall be posted by it immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(i) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that any complaint allegations not herein specifically found to be a violation be dismissed.

IT IS ALSO FURTHER ORDERED that the election in Case 8–RC–13523 be set aside, and that the petition in Case 8–RC–13523 be dismissed.

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''